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Testimony of the American Council of Life Insurers before the Aging Committee  
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**Senate Bill 265 – An Act Concerning the Protection of Consumers who Receive Investment Advice from Financial Advisors**

Senator Crisco, Representative Megna and members of the Aging Committee, the American Council of Life Insurers (ACLI) appreciates the opportunity to offer the following comments in opposition to **Senate Bill 265 – An Act Concerning the Protection of Consumers who Receive Investment Advice from Financial Advisors**. The proposed legislation is in conflict with existing U.S. Securities and Exchange Commission requirements. All of the bill's requirements already must be satisfied by investment adviser Form ADV<sup>1</sup> administered by the U.S. Securities and Exchange Commission (SEC) under the Investment Advisers Act and implemented by state securities Administrators, including Connecticut. Senate Bill-265 is, therefore, redundant and unnecessary.

Connecticut statutes already provide restrictions on consulting fees and commissions. Producers must provide written disclosure signed by the consumer before receiving compensation (CT Gen. Stat. Ann. 38a-707). And Sec. 38a-734 prohibits certified consultants who are receiving fees from the person served from also receiving payments from insurers or producers for the sale of insurance. Lastly, Connecticut regulations restrict the use of the terms financial planner, investment adviser, financial consultant or financial counseling to imply that the insurance agent is engaged in an advisory business in which compensation is unrelated to sales unless such is the case. Connecticut statutes and regulations already provide significant consumer protections.

In addition, there is comprehensive federal requirements imposed on financial advisors. Specifically, SEC Form ADV governs investment advisers subject to both state and federal jurisdiction. Sections 203 and 204 of the Advisers Act [15 U.S.C. §§ 80b-3 and 80b-4] authorize the SEC to collect the information required by Form ADV. The SEC collects the information for regulatory purposes. Filing Form ADV is mandatory for advisers who are required to register with the SEC, for state regulated investment advisers, and for exempt reporting advisers.

The North American Securities Administrators Association recommends that states fully implement Form ADV in their regulation of investment advisers and notes that:

The Members of the North American Securities Administrators Association, Inc. ("NASAA") have approved revisions to Part 1B of the Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers ("Form ADV"). Form ADV is used by investment advisers to register and/or report with the appropriate state securities regulators and the Securities and Exchange Commission ("SEC"). Investment advisers registering with one or more state securities

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<sup>1</sup> <http://www.sec.gov/about/forms/formadv.pdf>

regulators must complete Form ADV and also Part 1B. A completed Form ADV, including Part 1B, is a requirement for registration by every state, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico. Following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Form ADV was significantly revised in large part to carry out the provisions under Title IV of this new law.

As an example of the identical categories of information in Form ADV that would be required in SB 265, we cite the following provisions of Form ADV, its instructions and the Brochure required to be delivered to customers:

As a fiduciary, you have an ongoing obligation to inform your clients of any material information that could affect the advisory relationship. As a result, between annual updating amendments you must disclose material changes to such information to clients even if those changes do not trigger delivery of an interim amendment.

Disclosure Obligations as a Fiduciary. Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship. As a fiduciary, you also must seek to avoid conflicts of interest with your clients, and, at a minimum, make full disclosure of all material conflicts of interest between you and your clients that could affect the advisory relationship. This obligation requires that you provide the client with sufficiently specific facts so that the client is able to understand the conflicts of interest you have and the business practices in which you engage, and can give informed consent to such conflicts or practices or reject them. To satisfy this obligation, you therefore may have to disclose to *clients* information not specifically required by Part 2 of Form ADV or in more detail than the brochure items might otherwise require. You may disclose this additional information to *clients* in your *brochure* or by some other means.

1. To whom must we deliver a firm brochure?

You must give a firm brochure to each client. You must deliver the brochure even if your advisory agreement with the client is oral. See SEC rule 204-3(b) and similar state rules.

2. When must we deliver a brochure to clients?

You must give a firm brochure to each client before or at the time you enter into an advisory agreement with that client. See SEC rule 204-3(b) and similar state rules.

Each year you must (i) deliver, within 120 days of the end of your fiscal year, to each client a free updated brochure that either includes a summary of material changes or is accompanied by a summary of material changes, or (ii) deliver to each client a summary of material changes that includes an offer to provide a copy of the updated brochure and information on how a client may obtain the brochure. See SEC rule 204-3(b) and similar state rules.

Item 5 Fees and Compensation

A. Describe how you are compensated for your advisory services. Provide your fee schedule. Disclose whether the fees are negotiable.

B. Describe whether you deduct fees from clients' assets or bill clients for fees incurred. If clients may select either method, disclose this fact. Explain how often you bill clients or deduct your fees.

C. Describe any other types of fees or expenses clients may pay in connection with your advisory services, such as custodian fees or mutual fund expenses. Disclose that clients will incur brokerage and other transaction costs, and direct clients to the section(s) of your brochure that discuss brokerage.

D. If your clients either may or must pay your fees in advance, disclose this fact. Explain how a client may obtain a refund of a pre-paid fee if the advisory contract is terminated before the end of the billing period. Explain how you will determine the amount of the refund.

E. If you or any of your supervised persons accepts compensation for the sale of securities or other investment products, including asset-based sales charges or service fees from the sale of mutual funds, disclose this fact and respond to Items 5.E.1, 5.E.2, 5.E.3 and 5.E.4.

1. Explain that this practice presents a conflict of interest and gives you or your supervised *persons* an incentive to recommend investment products based on the compensation received, rather than on a *client's* needs. Describe generally how you address conflicts that arise, including your procedures for disclosing the conflicts to clients. If you primarily recommend mutual funds, disclose whether you will recommend "no-load" funds.
2. Explain that clients have the option to purchase investment products that you recommend through other brokers or agents that are not affiliated with you.
3. If more than 50% of your revenue from advisory clients results from commissions and other compensation for the sale of investment products you recommend to your clients, including asset-based distribution fees from the sale of mutual funds, disclose that commissions provide your primary or, if applicable, your exclusive compensation.
4. If you charge advisory fees in addition to commissions or markups, disclose whether you reduce your advisory fees to offset the commissions or markups.

Item 19 Requirements for State-Registered Advisers

A. Identify each of your principal executive officers and *management persons*, and describe their formal education and business background. If you have supplied this information elsewhere in your Form ADV, you do not need to repeat it in response to this Item.

Senate Bill 265 should be rejected because it is fully duplicative of existing state and federal requirements, and is, therefore, burdensome, redundant and unnecessary. Thank you for your consideration of our position in opposition to Senate Bill 265. Please contact John Larkin at (860) 508-9924 or Kate Kiernan at (202) 624-2463 with any questions.

*The American Council of Life Insurers (ACLI) is a national trade association with approximately 300 member companies operating in the United States and abroad. 217 member companies serve Connecticut consumers. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums in Connecticut. Learn more at [www.acli.com](http://www.acli.com).*